

### **REMARKS**

Upon entry of this Amendment, claims 2-17 will be pending in this application. Claim 18 has been canceled without prejudice or disclaimer. Claims 9 and 10 have been amended. Claim 9 has been amended solely to improve the readability of the claim.

#### **Rejection of Claims 1-18 Under Section 103(a) Based Upon Zelman in view of Mauch**

Claims 1-18 stand rejected under 35 U.S.C. § 103(a) (hereinafter "Section 103(a)") as being render unpatentable over U.S. Patent No. 6,343,858 to Zelman (hereinafter "Zelman") in view of U.S. Patent No. 6,170,949 to Mauch (hereinafter "Mauch").

Claim 1 and 18 are canceled and, therefore, their rejection is moot. The rejection of claims 2-17 is respectfully traversed.

Independent claim 9 recites an eyewear assembly comprising a primary eyeglass frame including first and second recessed sockets provided with respective metallic, non-magnetized bottom and side walls. As recited in claim 9, the eyewear assembly further comprises an auxiliary eyeglass frame permanently affixed to magnets having protruding portions. The protruding portions of the magnets are sized and configured to be received into corresponding ones of the sockets and to magnetically attract the metallic, non-magnetized bottom and side walls of the sockets. This claimed construction inherently produces a catch-and-click mating engagement of the magnets with the sockets. The "catch-and-click mating engagement" feature is characterized in the specification as follows. The magnets

permanently affixed to the auxiliary eyeglass frames attract not only to the corresponding metallic bottom surfaces of the corresponding sockets of the primary frames, but also the metallic side walls of the sockets. As a consequence, a relatively large surface area is provided at which the magnets engages or "catches" the upper edges of the corresponding stainless steel socket. Once caught on the metallic side walls, the magnets may be guided in small lateral adjustments while maintaining contact against the side wall edges until the magnets are received into the sockets. The reception of the magnets into their corresponding sockets provides a clicking engagement, which indicates to the wearer that the auxiliary eyeglasses are fully engaged and mated with the primary eyeglasses.

Independent claim 10 shares several of the same features as described above with regard to claim 9, with the exception that the primary eyeglass frames are provided with the protruding magnets, and the auxiliary eyeglass frame is provided with the recessed sockets having respective metallic, non-magnetized bottom and side walls.

The Examiner has acknowledged that Zelman fails to teach a primary or secondary eyeglass frame having recessed sockets with respective metallic, non-magnetized bottom and side walls. For example, Zelman discloses an apparatus comprising a plurality of sockets formed on temple extensions of the conventional eyeglasses, and a plurality of sockets formed on appendages of the auxiliary sunglasses. Neither socket comprises metallic, non-magnetized bottom and side

walls. As a consequence, as Applicant respectfully submitted in the prior Response, Zelman does not possess the catch-and-click feature of the present invention.

The Examiner replied to this argument in the final Office Action by stating that Applicant "does not point out the reasons why the extends of the magnet constructed and arranged to fit into the recess of the socket in Zelman and Mauch references do not have the function of catching and clicking."

Applicant respectfully disagrees. This issue was addressed in Applicant's prior response, and is explained again below.

Zelman uses permanent magnets in both its conventional and auxiliary eyeglasses. The permanent magnets each have a respective pole that exerts a maximum magnetic force along the respective axes. *See, e.g.*, Zelman, col. 3, lines 3-4 and 8-17. As a result, the poles of the permanent magnets automatically align with one another, so that the extended magnets are received directly in the sockets of the recessed magnets.

Unlike the permanent magnets of Zelman, the metallic, non-magnetized sockets of the eyeglass assembly of the present invention neither have magnetic poles nor exert a maximum magnetic force along the respective axes. As a result, the permanent magnets do not align with the metallic, non-magnetized sockets. Instead, the permanent magnets are attracted to the side walls of the metallic, non-magnetized sockets. These attractive forces result in the magnet engaging or catching the upper edge of the socket. Once caught on the metallic side walls, the magnets may be guided in small lateral adjustments while maintaining contact

against the side wall edges until the magnets are received and "clicked" into the sockets.

For these reasons, the magnets of Zelman do not exhibit the "catch-and-click" engagement feature of the present invention.

The Office Action also states that the "catch-and-click mating is not a feature, but the function of the extends of the magnet constructed and arranged to fit into the recess of the socket." Applicant respectfully submits that this statement is not accurate. The catch-and-click engagement results from, *inter alia*, a magnet constructed and arranged to fit into the recess of the metallic, non-magnetized socket. Zelman does not teach a metallic, non-magnetized socket and, therefore, does not teach a construction suited for catch-and-click mating.

Zelman teaches orienting the magnets of the conventional and auxiliary eyeglasses to exert the maximum magnetic attractive force between the magnets along their respective axes is a "key feature" of the Zelman invention. *See, e.g.*, Col. 7, lines 44-50. The Examiner's suggested modification to Zelman, however, would result in the elimination of a set of magnets exerting maximum magnetic attractive forces, thereby destroying this "key feature."

The Examiner's proposed modification, *i.e.*, substituting one of Zelman's pairs of permanent magnets for the "ferrous material" disclosed in Mauch, contradicts another feature of Zelman. As described in detail in Applicant's prior Response, Zelman teaches an automatic alignment feature and characterizes this feature as a "unique and important improvement." However, modifying Zelman in the manner

suggested by the Examiner would result in an eyewear assembly in which the axes of the permanent magnets do not align with the axes of the sockets. Rather, the permanent magnet axes would align with the side walls of the non-magnetized sockets. As a consequence, the magnets would engage or "catch" the upper edges of the corresponding metallic socket side walls instead of automatically aligning with their corresponding sockets.

For these reasons, Applicant respectfully submits that claims 9 and 10 are patentable over Zelman and Mauch, when taken alone or in combination. Applicant further respectfully submits that claims 2-8 and 11-17, which depend from claims 9 and 10, respectfully, and include all of the distinguishing features thereof, are patentable over Zelman and Mauch, alone or in combination, for the reasons advanced above.

**Rejection of Claims 10-17 Under  
Section 103(a) Based Upon Lee**

Claims 10-17 stand rejected under Section 103(a) as being rendered unpatentable over U.S. Patent No. 6,231,179 to Lee (hereinafter "Lee").

Claim 10 has been amended to recite, in summary, an eyewear assembly comprising primary eyeglasses and auxiliary eyeglasses that are attachable wherein the primary eyeglasses comprise first and second magnets with protruding portions, and the auxiliary eyeglasses are provided with metallic, non-magnetized recessed sockets which are configured to receive the magnets, whereby when the primary eyeglasses are worn on the human face, the protruding portions of the

magnets are received into the corresponding one of the sockets from above the corresponding one of the sockets.

Lee fails to disclose or suggest bottom mounting, as the Examiner has impliedly acknowledged by withdrawing a similar rejection based on Lee of claims 2-9 in view of Applicant's prior amendment to these claims. Furthermore, the Examiner did not reject claim 18 under Lee, and newly amended claim 10 now contains the subject matter of claim 18.

Dependent claims 11-17 are not anticipated by Lee in that they depend from and more specifically recite the invention of independent claim 10.

For these reasons, withdrawal of the Section 103(a) rejection based on Lee is in order.

### **Conclusion**

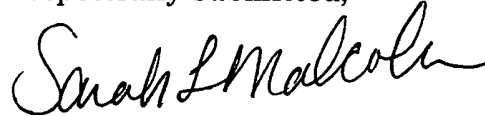
Applicant respectfully submits that claims 2-17 as pending patentably distinguish over the cited and applied references, and are in condition for allowance. Reconsideration of the application is requested in view of the remarks set forth above.

A Petition for a three month extension of time, RCE Transmittal form, and check to cover the respective fees are being filed concurrently herewith. If this

amount is deficient or if there are any other fees due in connection with this application, please charge our Deposit Account No. 501324.

Dated: October 2, 2003

Respectfully submitted,



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**CERTIFICATE OF EXPRESS MAILING**

Express Mail Label No. EV 260562247 US

Date of Deposit: October 2, 2003

I hereby certify that this Response to Office Action No. 3 and Amendment is being deposited with the U.S. Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above and is addressed Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313.

